

APR 6 8 25 AM '98
Before the
Federal Communications Commission
Washington, D.C. 20554
DISC 1

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 97-118
Table of Allotments,) RM-9061
FM Broadcast Stations.)
(Pentwater and Walhalla,)
Michigan)¹)

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: March 25, 1998

Released: April 3, 1998

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the Notice of Proposed Rule Making, 12 FCC Rcd 4127 (1997), proposing the allotment of Channel 274A to Walhalla, Michigan, as that community's first local service. The Notice was issued in response to a petition filed by Roger Lewis Hoppe II ("Hoppe").² Hoppe filed comments reiterating his intention to apply for Channel 274A at Walhalla. Bay View Broadcasting, Inc. ("Bay View") filed a one-step application for Channel 274A at Pentwater, Michigan,³ which has been accepted as a counterproposal in this proceeding since it was filed after Hoppe's rulemaking petition but prior to the deadline of June 9, 1997, for filing counterproposals in this proceeding.⁴ Hoppe and Bay View filed reply comments.⁵

¹ The community of Pentwater has been added to the caption.

² The petition for rule making was filed on February 24, 1997.

³ See Conflict Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, 7 FCC Rcd 4917 (1992), recon. granted in part and denied in part, 8 FCC Rcd 4743 (1993).

⁴ The application (BPH-9703191E) filed by Bay View was put on public notice on July 7, 1997, Report No. 2209.

⁵ On July 22, 1997, after the initial comment period had closed, Hoppe submitted comments proposing the allotment of Channel 255A at Baldwin, Michigan. Hoppe's comments constitute an untimely filed counterproposal in this proceeding in that it is late filed and introduces a new community. Therefore, no consideration will be given to an allotment at Baldwin in this proceeding or to the Opposition and Motion to Strike filed by Bay View Broadcasting, Inc. in response to an allotment at Baldwin.

2. Bay View, permittee of Station WMOM, filed a one-step application requesting the substitution of Channel 274A for Channel 276A at Pentwater, Michigan, and modification of its construction permit accordingly. According to Bay View, the allotment of Channel 274A at Pentwater will allow it to upgrade Station WMOM to maximum Class A facilities and should be preferred over an allotment at Walhalla. Bay View argues that although an allotment at Walhalla would presumably be considered first local service and of a higher priority than providing expanded service at Pentwater, Walhalla does not constitute a community for allotment purposes. In an attempt to resolve the mutual exclusivity, Bay View states that it conducted a frequency search and has determined that Channel 255A can be allotted to Walhalla should the Commission determine that Walhalla is a community for allotment purposes. Bay View encourages the Commission to allot Channel 255A to Walhalla so that the application for Channel 274A at Pentwater may be granted.

3. The Notice requested that Hoppe furnish information to demonstrate that Walhalla has the social, economic and cultural indicia to qualify it as a community for allotment purposes. Hoppe states that Walhalla is located in Branch Township in eastern Mason County and, although unincorporated, has a population of 400 people with a post office and zip code. According to Hoppe, Walhalla is the hub of Branch Township and in fact, the Branch Town Hall is located on first Street in Walhalla where monthly town meetings are held. Hoppe points out that the town hall is also used by residents for social functions as well as club meetings. Hoppe states that the Branch Township Fire Department is located on U.S. 10 in Walhalla and that the Walhalla Shores Property Association is active in the community, maintaining roads and performing snow removal during the winter. The Tallman Lake Senior Center provides activities and other services for retired people living in Walhalla. Hoppe states that businesses such as the Walhalla Grocery store, Walhalla Car Company, Knotty Pine Antique Mall, Country Critters Cafe, Fort Custer Market, Walhalla Phillips 66, and the Walhalla Bargain Center serve the residents of Walhalla. Hoppe believes that Walhalla is a community for allotment purposes and that the public interest would be served by providing the residents of Walhalla with local service.

4. We believe that Hoppe has provided us with sufficient indicia to conclude that Walhalla is a community for allotment purposes. It is an identifiable population grouping with businesses and community organizations that identify themselves with the residents of Walhalla. See Garrison, Kentucky, 6 FCC Rcd 1428 (1991), Harrietta, Michigan, 12 FCC Rcd 6058 (1997) and Keansville, Florida, 10 FCC Rcd 9831 (1995).

5. After consideration of the information filed in this proceeding, we believe the public interest would be served by the allotment of an FM channel at Walhalla and the substitution of channels at Pentwater. A staff engineering study indicates that there is an additional channel available for allotment at Walhalla which removes the conflict with Pentwater. In response to the Notice, we will allot Channel 255A to Walhalla, Michigan, as that community's first local service. Channel 255A can be allotted to Walhalla provided there is a site restriction

6.3 kilometers southwest of the community.⁶ The site restriction will prevent a conflict with Station WKLZ, Channel 255C1, Petoskey, Michigan. The allotment of Channel 255A at Walhalla removes the conflict with the application filed by Bay View Broadcasting, Inc., to substitute Channel 274A for Channel 276A at Pentwater, Michigan (BPH-970319IE) at its selected site.⁷ Since Walhalla is located within 320 kilometers (200 miles) of the Canadian border, Canadian concurrence has been obtained for the allotment of Channel 255A at Walhalla.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective May 18, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

<u>Community</u>	<u>Channel No.</u>
Walhalla, Michigan	255A

7. A filing window for Channel 255A at Walhalla, Michigan, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission, Shall send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

Bay View Broadcasting, Inc.
4359 South Howell, Suite 106
Milwaukee, Wisconsin 53207

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

⁶ The coordinates for Channel 255A at Walhalla are 43-54-08 and 86-10-13. Action on the application filed by Bay View will be taken by the Audio Services Division.

⁷ The coordinates for Channel 274A at Pentwater are 43-52-18 and 86-21-14.

10. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 255A at Walhalla, Michigan, should be addressed to the Audio Services Division, Mass media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau